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CAROL A. TRUJILLO

County of San Diego

CITIZENS' LAW ENFORCEMENT REVIEW BOARD

1168 UNION STREET, SUITE 400, SAN DIEGO, CA 92101-3819
TELEPHONE: (619) 238-6776 FAX: (619) 238-6775
www.sdcountry.ca.gov/clerb

REGULAR MEETING AGENDA

TUESDAY, MARCH 10, 2009, 5:30 P.M.

San Diego County Administration Center

1600 Pacific Highway, Room 302/303, San Diego, 92101

The public portion of the meeting must be concluded in time to allow the public to vacate the building by 6:00 p.m.
(Free parking is available on the street or pay Ace Parking on the south side. Enter at the north entrance.)

Pursuant to Government Code Section 54954.2 the Citizens' Law Enforcement Review Board will conduct a meeting at the above time and place for the purpose of transacting or discussing business as identified on this agenda. Complainants, subject officers, representatives or any member of the public wishing to address the Board on any of today's agenda items should submit a "Request to Speak" form to the Administrative Secretary prior to the commencement of the meeting.

DISABLED ACCESS TO MEETING

A request for a disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. Any such request must be made to Ana Becker at (619) 238-6776 at least 24 hours before the meeting.

1. ROLL CALL

2. MINUTES APPROVAL

- a) Minutes of the January 2009 Regular Meeting (*Attachment A*)

3. EXECUTIVE OFFICER'S REPORT

- a) Open Complaints/Investigations Workload Reports (*Attachment B*)

4. NEW BUSINESS

- a) Swearing in of new Board Member Loren Vinson

5. UNFINISHED BUSINESS

- a) NA

6. PUBLIC COMMENTS

This is an opportunity for members of the public to address the Board on any subject matter that is within the Board's jurisdiction. Each speaker should complete and submit a "Request to Speak" form to the Administrative Secretary.

7. CLOSED SESSION

- a) **Officer Discipline Recommendation** - Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation.
 - **07-135 / Evaro:** (Sustained - Unidentified)
- b) **Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session).
 - **Civil Service Commission decision: 07-103 / Lewis & Verzella**

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

CASES FOR SUMMARY HEARING (10)

ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

07-037

1. Misconduct/Procedure – Deputy 1 failed to conduct a thorough investigation into allegations of sexual and/or physical abuse of a minor as reported by the complainant.

Recommended Finding: Action Justified

Rationale: Deputy 1's Crime Report documented that he took all the required steps with regard to this allegation. He properly contacted a detective in the Child Abuse Unit and was instructed that this unit would conduct the follow-up investigation. The evidence shows Deputy 1's conduct was lawful, justified and proper.

2. Misconduct/Procedure - Deputy 2 interviewed a minor alone and allegedly told him, "Stop telling lies about your mother."

Recommended Finding: Action Justified

Rationale: Deputy 2 attempted to interview the minor with his father present but was unable due to the father's (complainant's) interference. Deputy 2 requested and received permission to interview the minor alone. Deputy 2 did not recall making this statement, but said it would not have been inappropriate based upon the minor recanting his testimony and disclosure that the complainant instructed the minor to lie about the abuse. Deputy 2 reminded the minor that it is always better to tell the truth. The evidence shows that Deputy 2's conduct was lawful, justified and proper.

3. Misconduct/Intimidation – Deputy 3 attempted to dissuade the complainant from reporting child abuse by threatening him with custody removal.

Recommended Finding: Action Justified

Rationale: After the minor recanted his testimony, Deputy 3 instructed the complainant that it was not acceptable to file false reports. Deputy 3 also informed the complainant that coercing a child to make false allegations against a parent can cause emotional harm to the child and that in similar cases, when emotional abuse has been substantiated, offending parents have lost their custody rights. Deputy 3 told the complainant he risked losing custody rights for fabricating reports. The evidence shows that Deputy 3 only attempted to dissuade the complainant from filing false reports. The evidence shows that Deputy 3's conduct was lawful, justified and proper.

08-018

1. Misconduct/Procedure – Deputy 1 wrongfully denied the complainant, who is a lawyer, a professional visit with his son.

Recommended Finding: Action Justified

Rationale: State law requires jails to ensure that inmates have access to their attorneys. County jails afford attorneys "professional" visits so they may talk confidentially with their inmate clients, as required by Sheriff's policy and state regulations. The complainant, an attorney, sought a "professional visit" with his inmate son at the jail. According to the complaint, the complainant identified himself as an attorney and the inmate's father. It is not clear from the complaint whether the complainant told jail officials he was also his son's legal representative. Neither the complainant nor his son responded to requests for clarification. Deputy 1 and a sergeant on duty both recalled that the complainant demanded a "professional visit" because he was an attorney, not because he was his son's attorney. Sheriff's policy authorizes professional visits for the attorney of record "in the course of their professional duties relating to the administration of justice." When the nature of the visit is in question, a jail's watch commander is tasked with determining whether a visit is professional or social. If a professional visit is denied, the watch commander may authorize a "social" or telephone visit. Based on the information presented, Deputy 1 exercised her judgment according to policy and denied the complainant a professional visit. She instead offered a social visit, which the complainant declined. Deputy 1's actions were lawful, justified and proper.

08-026

1. Misconduct/Procedure – Deputy 1 failed to provide proper instructions to the complainant for the retrieval of her ring held in Sheriff's evidence.

Recommended Finding: Action Justified

Rationale: Deputy 1 was unable to release the ring the complainant sought because he did not seize it and was not the assigned detective. He referred the complainant to the assigned detective. His actions were lawful, justified and proper.

2. Misconduct/Procedure – Deputy 2 failed to provide proper instructions to the complainant for the retrieval of her ring held in Sheriff's evidence.

Recommended Finding: Action Justified

Rationale: The complainant was one of three people who claimed ownership of a diamond ring found in the possession of a parolee and impounded as evidence. The complainant did not produce evidence of ownership, such as receipt. In accordance with Sheriff's procedure on release of property, Deputy 2 properly instructed the complainant to obtain a court order directing the release of the ring to her. The complainant did not do so. Deputy 2's actions were lawful, justified and proper.

1. Misconduct/Procedure – Deputy 1 conducted an incomplete investigation of an assault with a deadly weapon.

Recommended Finding: Action Justified

Rationale: A student was seriously injured during a midnight attack on a homecoming float with paintballs and eggs. Deputy 1 began an investigation within hours of the incident to determine whether the injury resulted from an accidental or criminal act. He examined the scene, reviewed medical records, submitted the suspected weapon for testing with negative results, and with another detective interviewed all witnesses at least once in to separate observations from rumor and speculation. No one involved in the melee, including the student, saw how the student was injured, and the suspect denied striking the student. The case was promptly submitted to the District Attorney, which declined to prosecute for lack of evidence of a crime. Deputy 1's conduct was lawful, justified, and proper.

2. Misconduct/Procedure – Deputy 1 conducted a biased investigation of an assault with a deadly weapon.

Recommended Finding: Action Justified

Rationale: In small communities, relatives, friends, acquaintances and neighbors of deputies and their families could be suspects, witnesses, or victims in a deputy's assigned case. Deputy 1, assigned to investigate a possible assault with a deadly weapon, has a distant relationship to a suspect and his family. He denied any conflict of interest, and his investigation showed professionalism, not personal bias. He discussed the relationship with supervisors, who evaluated the relationship and the detriments to the investigation of assigning a new detective, found no conflict of interest, and kept him on the case. Another deputy interviewed the suspect and the suspect's father and co-interviewed several witnesses with Deputy 1. Deputy 1's conduct was lawful, justified, and proper.

3. Misconduct/Procedure – Deputy 3 and/or Deputy 4 kept Deputy 1 on the case after becoming aware that Deputy 1 was related to a suspect.

Recommended Finding: Action Justified

Rationale: See Rationale in Allegation #2.

4. Misconduct/Discourtesy - Deputy 2 told the injured student he didn't "get into this high school drama, I do the big cases."

Recommended Finding: Unfounded

Rationale: This allegation was made by the injured student's parents, who were not present during the recorded interview. The student did not recall Deputy 2's exact words or the context but paraphrased the statement as the "case was not a big deal to him" and felt the statement was derogatory to her. A review of the taped interview showed that Deputy 2 actively participated in this and other interviews and that his tone and questions were professional, attentive and fact-seeking. He stated he normally investigated "sex crimes and burglaries and the bad things that happen. Silly stuff at school I try and stay out of," before asking the student to relate the history of high school classes attacking each other's homecoming floats. The evidence showed that Deputy 2's did not make the alleged statement. His reference to "silly stuff," though offensive to the complainants, was not discourteous on its face or in context.

5. Misconduct/Procedure – Deputy 2 interviewed a suspect over the phone rather than in person.

Recommended Finding: Action Justified

Rationale: There is no requirement in law or Sheriff's Department policy that a suspect be interviewed in person. How a suspect is interviewed is dictated by circumstances and investigative strategy. In this case, Deputy 2 interviewed the suspect, who lived out of state, by telephone. Confronted with a witness account that he had a bat and told that the bat would be tested, the suspect adamantly denied hitting the student. Deputy 2's actions were lawful, justified, and proper.

08-031

1. Misconduct/Procedure – Detention deputies refused to give the complainant a sobriety test.

Recommended Finding: Action Justified

Rationale: Persons arrested for 647(f) P.C. do not receive sobriety tests pursuant to arrest, and detention deputies are not responsible for collecting evidence for crimes committed outside of their facility. The evidence shows the deputies' conduct was lawful, justified and proper.

2. Misconduct/Procedure – Detention deputies held the complainant without cause in a drunk tank.

Recommended Finding: Action Justified

Rationale: The complainant was arrested by Carlsbad Police Officers for Public Intoxication and taken to a detention facility for detainment until such a time he was no longer a danger to himself or others. The complainant was held in a holding tank for approximately 6 hours, then released pursuant to Sheriff's Policy and Procedure, 6.15 Permissive Release of Misdemeanor Arrests. The evidence shows the deputies' conduct was lawful, justified and proper.

08-033

1. Misconduct/Procedure - Deputy 1 tailgated then sped past the complainant's vehicle.

Recommended Finding: Sustained

Rationale: Deputy 1 and his partner said a vehicle slowed in front of their bus while driving on a hill and they kept 1-2 car lengths behind by slowing the bus. Deputy 1 admittedly exceeded the posted speed limit, and an automated vehicle locator report corroborated that information. Sheriff's Policy and Procedure 2.35, Operation of Vehicles, states that employees shall operate official vehicles in a careful and prudent manner, shall obey all laws of the state and all Departmental orders pertaining to such operation, and shall set a proper example for other persons by their operation of official vehicles. The evidence supports the allegation, and Deputy 1's conduct was not justified.

08-036

1. Misconduct/Untruthfulness - Deputy 1 gave false testimony about the complainant's drug arrests.

Recommended Finding: Action Justified

Rationale: Deputy 1 testified before an administrative law judge that the complainant, a former deputy sheriff and Naval reservist, had not made a drug arrest in several years preceding the complainant's two failed drug tests by the Navy, nor had he responded to any calls for service regarding methamphetamine or methamphetamine labs before testing positive for methamphetamine. A review of the complainant's arrests in which methamphetamine was impounded corroborated Deputy 1's testimony. An arrest cited by the complainant in support of his allegation, in which a baggie containing a minute amount of methamphetamine was impounded, occurred *months after* the positive drug tests. Deputy 1's conduct was lawful, justified, and proper.

2. Misconduct/Untruthfulness - Deputy 1 gave false testimony about the complainant's retirement from the Navy Reserves.

Recommended Finding: Action Justified

Rationale: Deputy 1's testimony before an administrative law judge in response to the complainant's questioning was admittedly based on a Navy Chief's statement that the complainant tried to circumvent the system and expedite the process for retiring from the Reserves. The judge asked Deputy 1 about his statement, recognized it as hearsay, and admitted it and weighed it as such. The retirement documents provided by the

complainant in support of this allegation were dated *the day after* his first failed drug test and *the day of* his second failed drug test. Deputy 1's conduct was lawful, justified, and proper.

08-037

1. Discrimination/Racial – Deputy 1 stopped and detained the complainant because of his race.

Recommended Finding: Summary Dismissal

Rationale: Deputy 1 was off-duty at the time of this incident, and the Review Board lacks jurisdiction. This matter was referred back to the Department for further investigation.

2. Misconduct/Procedure – Deputy 1 did not follow Department procedure in contacting the complainant.

Recommended Finding: Summary Dismissal

Rationale: Deputy 1 was off-duty at the time of this incident, and the Review Board lacks jurisdiction. This matter was referred back to the Department for further investigation.

3. Misconduct/Harassment – Deputy 1 obtained the complainant's telephone number and called him several times.

Recommended Finding: Action Justified

Rationale: Deputy 1 left four messages for the complainant in an attempt to apologize to him as requested by the complainant. During a hearing brought forth by the complainant for a restraining order against Deputy 1, the complainant admitted to the judge that he had demanded an apology and Deputy 1 had been trying to apologize by telephone. The judge told the complainant at the conclusion of that hearing that he (the complainant) had "grossly over-exaggerated the events of that day as well as his feelings about the incident," and denied the restraining order "with prejudice." The evidence shows the conduct did occur but was lawful, justified and proper.

4. Misconduct/Truthfulness – Deputy 1 untruthfully said he identified himself to the complainant as a Deputy Sheriff and that the complainant used profanity.

Recommended Finding: Not Sustained

Rationale: There were no witnesses and the involved parties disagree over the statements made. There is insufficient evidence to either prove or disprove the allegation.

08-095

1. Death Investigation/Positional Restraint - Isaac Brown died after he was restrained by citizens and taken into the custody of the Sheriff's Department.

Recommended Finding: Action Justified

Rationale: While in the process of stealing beer from a convenience store, Brown was confronted, apprehended and restrained by store patrons for 13.5 minutes following a struggle. Deputies responded, placed Brown into handcuffs, and upon rolling him over discovered him unresponsive. Resuscitative efforts were performed by deputies and medical personnel until death was pronounced. The cause of death was cardiopulmonary arrest during prone restraint with acute alcohol and methamphetamine intoxication. The evidence shows the deputies' conduct was lawful, justified and proper.

09-011

3. Misconduct/Procedure – Corporal 1 and Deputy 2 did not inform bus driver Victor Nava that he was at fault for a traffic accident.

Recommended Finding: Action Justified

Rationale: Corporal 1 was on scene at the time of the incident, but did not speak with bus driver Nava. Deputy 2 interviewed Nava in order to gather information for the investigation. Only after speaking with all involved parties and witnesses and conducting a scene investigation did Deputy 2 determine who was at fault and why: Nava caused the collision while making an unsafe turn, in violation of 22107CVC, Turning Movements. Deputy 2's actions were lawful, justified and proper.

4. Misconduct/Procedure - Corporal 1 and Deputy 2 incorrectly found a bus owned by the complainant at fault for a collision in which the other vehicle was illegally parked in a red zone.

Recommended Finding: Action Justified

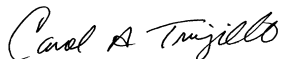
Rationale: Bus driver Nava drove his commercial bus down a heavily congested residential street. The victim vehicle in this collision was parked facing west bound beside a stop sign with the front tires over the limit line of the intersection, which is a violation of 22500(a) CVC. However, there were no red curb markings prohibiting parking. A witness said the victim vehicle may have been dragged into the intersection by the impact with the bus. The exact location of the unoccupied victim vehicle prior to impact was not known with complete certainty. The fact that the vehicle might have been illegally parked does not give another vehicle an excuse to hit it. A traffic investigation concluded Nava was in violation of 22107 CVC, Turning Movements. Corporal 1 and Deputy 2's conduct was lawful, justified and proper.

8. COMMUNICATIONS (*Attachment C*)

The following news articles from signonsandiego.com are attached to this agenda:

Article Title

Deputy who stole neighbor's dog is sentenced
Descanso jail will close to save money
County reports successes in war on meth
Officers' training to focus on domestic violence
Sheriff's Department above the law? (from News 6 website)



CAROL A. TRUJILLO
Executive Officer

CAT/ab
Attachments